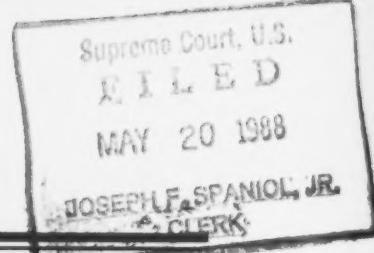


No. 87-1556



In the Supreme Court of the United States

OCTOBER TERM, 1987

CARLOS NATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

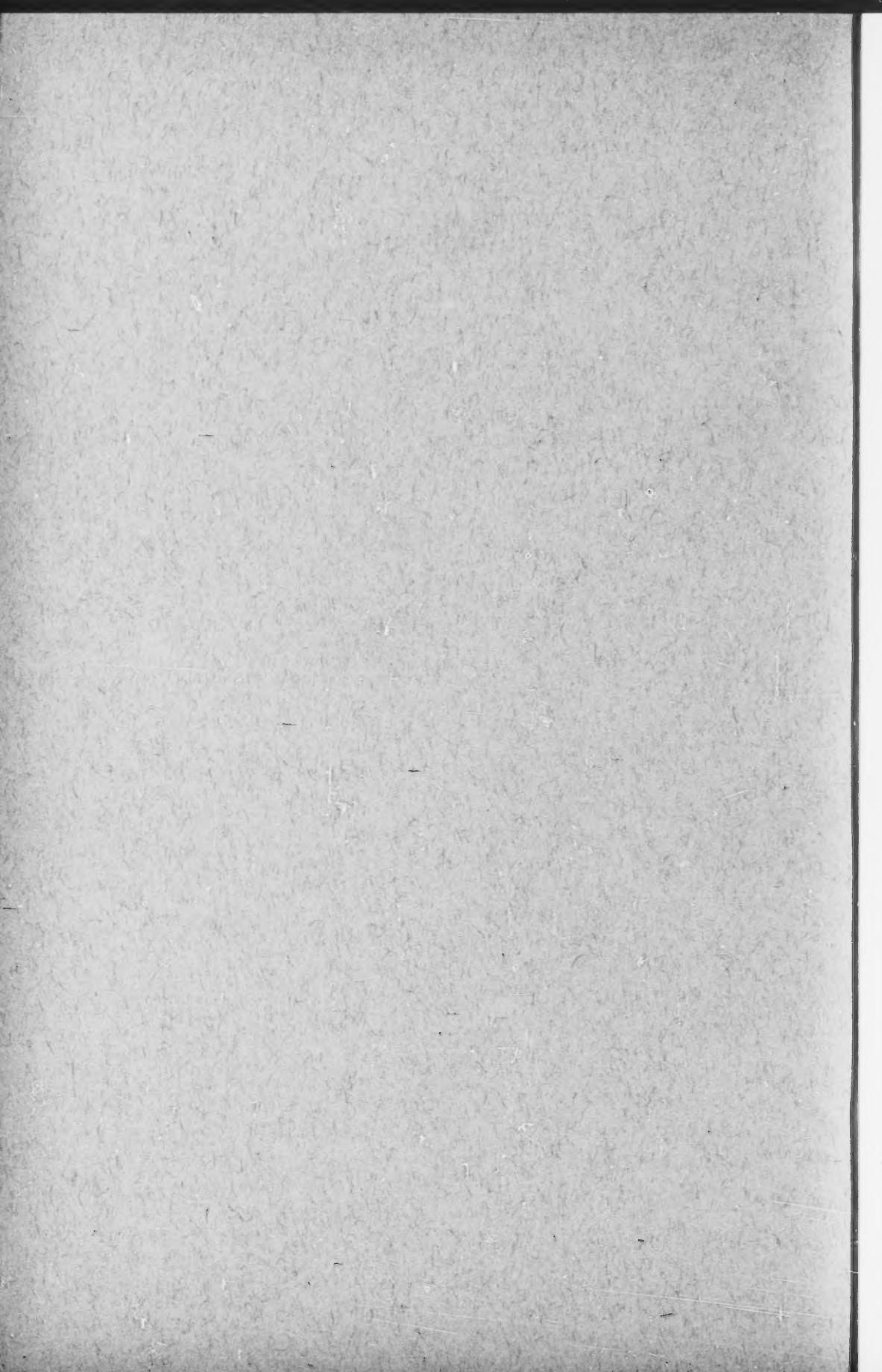
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QUESTION PRESENTED

Whether Customs officers, who reasonably suspected that petitioner was disobeying the currency-reporting laws, violated the Fourth Amendment by conducting a warrantless search of petitioner's luggage as he was leaving the United States.



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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 831 F.2d 860.

JURISDICTION

The judgment of the court of appeals was entered on October 30, 1987. A petition for rehearing was denied on January 21, 1988 (Pet. App. 1b-2b). The petition for a writ of certiorari was filed on March 18, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional plea of guilty in the United States District Court for the Central District of California, petitioner was convicted on one count of making a false statement to a government agency (18 U.S.C. 1001), and

on one count of failing to report the transportation out of the country of more than \$10,000 in currency (31 U.S.C. (& Supp. III) 5316(a)(1)(A)). He was sentenced to 18 months' imprisonment. Pet. App. 3a.

1. On April 29, 1986, Customs Service agent Ausalon Miramontes was inspecting baggage being checked onto an Avianca Airlines flight bound from Los Angeles to Bogota, Colombia. He was looking for undeclared currency. Agent Miramontes decided to inspect petitioner's two bags because they were new, unusually heavy, and did not carry passenger name tags. Agent Miramontes opened one of petitioner's bags, found \$2,000 in a towelette container, and observed a portable electric organ that smelled of fresh glue (Pet. App. 3a). Customs agents then stopped petitioner as he was about to board the flight, matched his baggage claim ticket, and explained the currency-reporting laws to him in both English and Spanish. Petitioner stated that he was not transporting more than \$2,000 in currency out of the country. Agent Miramontes, continuing to search petitioner's luggage, removed the rear panel of the electric organ and found \$105,000 in currency hidden inside. Pet. App. 3a-4a. Petitioner was then arrested.

2. Petitioner moved to suppress the currency discovered during the search of his luggage. He claimed that the Customs officers lacked reasonable suspicion to inspect his luggage, as required by the relevant statute then in effect (see 31 U.S.C. (Supp. III) 5317(b)).¹ He also con-

¹ Section 5317(b) provided:

A customs officer may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States with respect to which or whom the officer has reasonable cause to believe there is a monetary instrument being transported in violation of section 5316 of this title.

tended that the search violated his Fourth Amendment rights. The district court denied petitioner's motion. The court held that the search of petitioner's luggage was justified by the existence of reasonable suspicion. Pet. App. 4a.

The court of appeals affirmed. The court rejected petitioner's argument that 31 U.S.C. (Supp. III) 5317(b) was unconstitutional because it permitted border searches without a warrant or probable cause (Pet. App. 4a-5a). The court relied on prior Ninth Circuit cases and held that the "border search exception to the fourth amendment, which allows a search to be initiated without a warrant, probable cause or articulable suspicion, applies to exit searches" (Pet. App. 5a).²

Judge Kozinski dissented. In his view, the search of petitioner's luggage was unreasonable because it was conducted without notice and outside of petitioner's presence.

ARGUMENT

Petitioner contends (Pet. 6-12) that the warrant requirement of the Fourth Amendment applies at the border to persons and things leaving the country. That contention, however, finds no support in this Court's cases. Moreover, all the courts of appeals that have addressed this question agree with the Ninth Circuit's decision in this case. Thus, no further review is warranted.

1. The Court has long held that searches by Customs officers at the country's international borders require neither a warrant nor probable cause. See *United States v.*

² The court of appeals also rejected petitioner's claim that the Customs officers lacked reasonable cause to conduct the exit search, as was required by 31 U.S.C. (Supp. III) 5317(b). The court held (Pet. App. 7a) that a number of specific facts gave rise to reasonable suspicion that petitioner's luggage contained undeclared currency.

Ramsey, 431 U.S. 606, 616-617 (1977); *Carroll v. United States*, 267 U.S. 132, 153-154 (1925). In *California Bankers Ass'n v. Shultz*, 416 U.S. 21 (1974), the Court observed that this constitutional rule, which is premised on the nation's compelling interest in supervising its borders, applies to persons entering or leaving the United States: "those entering and leaving the country may be examined as to their belongings and effects, all without violating the Fourth Amendment * * *" (*id.* at 63 (emphasis added)). Since *California Bankers Ass'n*, a number of courts of appeals have held that the Fourth Amendment's warrant requirement does not apply at the nation's borders to persons and things leaving the country. See, e.g., *United States v. Hernandez-Salazar*, 813 F.2d 1126, 1137 (11th Cir. 1987); *United States v. Whiting*, 781 F.2d 692, 695 (9th Cir. 1986); *United States v. Udofo*, 711 F.2d 831, 839-840 (8th Cir.), cert. denied, 464 U.S. 896 (1983); *United States v. Ajlouny*, 629 F.2d 830, 833-834 (2d Cir. 1980), cert. denied, 449 U.S. 1111 (1981); *United States v. Swarovski*, 592 F.2d 131, 133 (2d Cir. 1979) (collecting cases). There is no contrary authority in the courts of appeals.

Furthermore, as the court of appeals explained in *United States v. Hernandez-Salazar*, 813 F.2d at 1137-1138, many of the reasons for upholding warrantless searches at the border apply whether the object of the search is entering or leaving the country. See also *United States v. Udofo*, 711 F.2d at 839; cf. *Haig v. Agee*, 453 U.S. 280 (1981). In both circumstances, the government has a compelling interest in stopping the flow of goods or persons whose movement across the border may harm the nation's vital interests.³

³ In his dissent, Judge Kozinski did not challenge the lawfulness of warrantless border searches on less than probable cause. He explained

2. Petitioner also claims (Pet. 10, 13) that the current version of 31 U.S.C. 5317(b) adopted as part of the Anti-Drug Abuse Act of 1986 (Pub. L. No. 99-570, Tit. I, § 1355, 100 Stat. 3207-22) is unconstitutional because it places no traditional Fourth Amendment limits—in particular, the requirement of reasonable suspicion—on Customs officers' searches for undeclared currency at the borders. The version of Section 5317(b) that was in effect at the time of petitioner's arrest, however, provided that a Customs officer could search a container only if he had "reasonable cause to believe there [was] a monetary instrument being transported in violation of [31 U.S.C.] 5316 * * *" (31 U.S.C. (Supp. III) 5317(b)). Both lower courts found that the Customs officers in this case had reasonable cause to inspect petitioner's luggage, and petitioner does not seek review of that determination. This case, therefore, does not present the question whether the present version of Section 5317(b) is unconstitutional because it allows searches at the border in the absence of reasonable suspicion.

(Pet. App. 15a-16a) that he would uphold searches of persons and things leaving the country if travelers were given adequate notice and allowed to be present during the searches.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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MAY 1988

